

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of:)	
)	MB Docket No. 04-232
)	
Retention by Broadcasters of)	
Program Recordings)	
)	

COMMENTS ON NOTICE OF PROPOSED RULEMAKING:
(Filed through ECFS)

These comments are being filed by myself, James P. Wagner, as an individual who has been employed for over 30 years full time in the radio broadcast industry. This employment has often been my sole means of support which should serve as evidence of the importance of the industry to me. During that period I have been employed in practically every capacity, including management, at the station and corporate level, in small, medium, and large markets. I possess a strong technical background, have MBA and BS degrees from an accredited college and university, have taught communications courses at the college level part-time, and have a lifetime, General Radiotelephone Operator License issued by the FCC (originally issued as a First Class Radiotelephone Operators License in 1971.) Presently I work for myself in a number of capacities in the radio broadcast industry. These comments are directed to radio broadcasting operations only. It is my opinion that the impact to the radio industry should be considered separately from television broadcasting.

1. COST: Regarding the cost of proposed recording systems, I have estimated that a cheap, “no-frills” computerized system could be purchased and installed for between \$3000.00 to \$5000.00 per unit that would record program material for around 90 days to a computer hard drive, at somewhat “low fidelity” and in “mono”. This would still be adequate for logging purposes. (It is assumed that the Commission will not set requirements for quality and stereo recording.) A problem would be redundancy. It is obvious to anyone who uses a computer that they are somewhat unreliable (especially when not being watched), necessitating a duplicate system to be installed for the sake of redundancy. (The Commission seems to have already grasped this concept as evidenced by the “main” and “alternate” systems it uses with its web site.) With this duplication the possibility of the computer “crashing” for unexplained reasons and missing program content for several days (say over a weekend) or some other problem could be minimized (but not always avoided). As such the cost to an individual station for such a redundant system (installed) would be, at a minimum, \$6000.00 to \$10000.00. Using the Commission’s figure of 11,000 radio stations being so affected, this would necessitate a one time industry expenditure of between \$66 million and \$110 million which will result in *absolutely no direct return on investment* for the industry, except to broadcast equipment manufacturers or suppliers. This does not take into consideration the operating cost of someone being charged with

checking and maintaining the system on a regular basis.

2. IMPACT ON SMALL STATIONS: While the cost of these installations may not be noteworthy to larger market stations with revenues far in excess of several millions of dollars a year, the impact on smaller market stations with revenues of less than \$250,000 a year is very significant since this expenditure is a very large part of its total revenue. Unfortunately, all stations, whether large or small, will require the same expenditures to implement such a system. Many of these larger market stations already have these systems in place due to sales needs, insurance requirements, or requirements necessitated by previous infractions. As such many of these larger market stations are indifferent to these requirements. Conversely, smaller and medium market stations would see this expenditure as an unanticipated, significant expense coming “off the top”. The Commission could consider abating Regulatory Fees for these stations for a period of several years to assist stations in this regard.

It may be prudent for the Commission to look to the impetus of the Rulemaking: the complaint and, subsequently, its origin. Although the Commission can see the “big picture” in this regard, it can only be speculated by those of us in the field that these complaints are mostly found in larger markets. Indeed, this is what is evidenced in the news. If these complaints are mainly found in larger markets (or

from programming originated in larger markets and rebroadcast on smaller market stations) then the Commission may want to consider exempting smaller and medium market stations from these requirements, especially if they are originating their own programming. Indeed, the Commission may want to test this system in only the top 50 markets, or only require these systems to be implemented at stations that have received material complaints. Thus most stations who are operating without complaints and in environments where these type of infractions are atypical would not be subject to the burden of installing systems that would never, in essence, be required to be accessed.

3. OTHER ALTERNATIVES: With the advent of computerized automation, many stations operate full time with locally-automated or semi-automated systems, receiving some sustaining programs via satellite. As such, much of the material has already been recorded at the station level. This often includes weather forecasts and newscasts which are updated (possibly minutes before airing), but still, for scheduling convenience, recorded and played through the automation system. The Commission, as an alternative, could require that all of this information, already recorded in the system, be retained for a period, say sixty days, along with the program log of what was scheduled to be played. In locally automated systems the music is all retained anyway, so the logs would show what music was scheduled along with the scheduled newscasts, weather forecasts,

advertisements, public service announcements, etc. In this manner a duplicate recording of all of this would not be required since it was being held in the automation system. It would require the program log and the recordings be held for sixty days in the system and for the station to certify that any "live" programming (such as remotes) be individually recorded. Regarding satellite delivered programs it could be made the responsibility of the provider to record these at the point of origin and provide them as required. Although the Commission may not have direct jurisdiction in this manner, it could certainly get cooperation through those with whom it does have jurisdiction and are users of or allied with this industry. All of this would still have significant impact on the small to medium market broadcaster which again, as stated above, might prove to be an excessive burden.

4. LISTENER CONFUSION: A comment needs to be made regarding what seems to be the confusion experienced by the listener in the field regarding identification of the station to which he or she is listening. Many of us will remember when the broadcast community felt that emphasis on the station call letters was of primary importance. Over time, due to the advent of the FM band and other factors, emphasis has been given to dial position as an identifier, minimizing the importance of call letters. As such listeners tend to identify stations by dial position and have become somewhat oblivious to call letters. But when trying to contact

stations, phone directories and most address sources are listed by call letters and not by dial position, creating confusion among listeners. As such, many times I have personally experienced at stations the frustrated listener who is trying to explain a record or a program or a newscast item that he or she has heard only to finally realize they heard it on another station. It would be interesting to see how many complaints have been confused in this regard. Although this seems on the surface to be an argument in favor of recording programs, it is really a "wake-up" call to restructure how the industry identifies itself and communicates with its listeners to eliminate this confusion.

5. SUMMARY: In conclusion it is my opinion that, while the recording requirements proposed may be warranted under some conditions, the industry as a whole should not be subject to these requirements since they may be unnecessary and an excessive financial burden for smaller operations. It seems these requirements should be imposed on those stations receiving material complaints and/or having a history of infractions to verify compliance. The money for these equipment expenditures could be better used, especially in smaller and medium markets, to increase salaries and employment at the station level. My experience has shown that the few complaints experienced in small and medium markets are usually handled and resolved at the station level without the FCC ever becoming involved. This is because the majority of these operators live and work

in or near the community they serve, are closely sensitive to the listener environment, and resolve these problems quickly and to the satisfaction of the listener or customer. Publicity in this regard is viewed as negative. Conversely, what seems to be evident in larger markets is that the controversy generated by these infractions to which the complaints refer seems to be the reward for the stations in and of itself. That is, the stations or their "talent" seem to seek the publicity, negative as it may be. Thus, the broadcast industry dichotomy: two different perspectives on the same situation. I do not feel the Commission can effectively treat this problem by "painting" the entire industry with such a single, "broad brush".

Thank you for the opportunity to make these comments to you.

Yours very truly,

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